

Letter of Findings: 04-20130225
Sales/Use Tax
For the 2010 Tax Year

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ISSUE

I. Sales/Use Tax – Horses Purchased in Racetrack Claiming Transactions.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-1-27; IC § 6-2.5-3-4; Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); [71 IAC 6.5-1-1](#); [71 IAC 6.5-1-2](#); [71 IAC 6.5-1-4](#); [45 IAC 2.2-3-4](#); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of use tax on two claimed horses.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") determined that Taxpayer had not paid sales tax on two horses that she acquired in claiming transactions that occurred at Indiana racetracks in 2010. Given that Taxpayer had not paid sales tax on these transactions, the Department issued a proposed assessment for use tax and interest. Taxpayer filed a protest regarding the proposed assessment. An administrative hearing was held; this Letter of Findings results. More facts will be provided below as needed.

I. Sales/Use Tax – Horses Purchased in Racetrack Claiming Transactions.

DISCUSSION

The Department found that Taxpayer purchased horses at Indiana racetracks by means of claiming transactions. Claiming races are a method of determining the price of a horse, with the successful claimant taking title to the horse "at the time the horse leaves the starting gate and is declared an official starter." Taxpayer was the claimant of horses that were raced in claiming races. The Department assessed tax based upon the claiming amounts paid by Taxpayer for the horses. (See also [71 IAC 6.5-1-1](#); [71 IAC 6.5-1-2](#); and [71 IAC 6.5-1-4](#) for further references to "claiming").

The notice of proposed assessment is prima facie evidence that the Department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-2-1 states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Use tax is imposed by IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also, [45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

The purchase of a horse is subject to Indiana's sales/use tax, since horses are tangible personal property. IC § 6-2.5-1-27. An exemption from use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4. The Department found that Taxpayer had acquired the horses at issue without paying sales tax at the time they were claimed, and assessed use tax on the transactions.

Taxpayer does not, in this protest, contest the taxability of the acquisition of horses in claiming transactions. Taxpayer, however, does argue that at the time of the purchases that she was "never informed of any such tax by the race track or it's [sic] agent," and that she was not given any "paperwork stating the State of Indiana was going to assess any Consumer Use tax on the claimed horses."

Regarding the issue of not being informed of the taxability of the horses, [45 IAC 15-11-2\(b\)](#) provides insight into the issue (although it should be noted, Taxpayer was not assessed a penalty). [45 IAC 15-11-2\(b\)](#) states, "Ignorance of the listed tax laws, rules and/or regulations is treated as negligence." Thus [45 IAC 15-11-2\(b\)](#)

stands for the fact that Taxpayers are supposed to be aware of the applicable tax laws. Even if a taxpayer was not charged sales tax in years past for claimed horses, a taxpayer should have self-assessed use tax because the horses are tangible personal property purchased in Indiana.

The Department does note that effective July 1, 2013, Indiana will have a statute (IC § 6-2.5-14) that will create an amnesty program for unpaid use tax on claimed horses. As provided by that statute, taxpayers that are eligible for the amnesty program will still have to remit the use taxes that are owed on claimed horses, but among the provisions of the amnesty statute are the abatement of penalties and interest associated with use taxes owed for claimed horses. Under the amnesty program, taxpayers may also enter into a payment plan regarding the use taxes owed on claimed horses.

FINDING

Taxpayer's protest is respectfully denied.

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